



# WOMEN EMPOWERMENT IN THE LIGHT OF UNIFORM CIVIL CODE

**Navdeep Kadian<sup>1</sup>**

## **Abstract**

People in India are governed by a number of personal laws, including those pertaining to civil matters like adoption, marriage, and inheritance. Personal laws have historically been regarded as crucial to Indian civilization. These laws were not messed with, not even throughout the Mughal or British periods. Discussions of the Uniform Civil Code, which would treat civil matters like marriage, inheritance, maintenance, and other similar matters equally for every person and therefore foster national cohesion and integrity, took place in the Constituent Assembly. Nonetheless, it was eventually categorised under the heading of Directive Principles of State Policy in the hopes that it would be implemented in the future under favourable conditions. The majority of personal laws are hostile to women and insensitive to their needs. The Indian Parliament has often worked to amend the personal laws to eliminate discriminatory clauses, but there is still no equity in the application of these civil rights. Women have been the victim of numerous atrocities, social injustices, and cultural norms for many years now in relation to family, the workplace, and other areas. Women's empowerment is a topic that is very important in today's society. Women's empowerment refers to a woman's capacity to decide and exercise control over issues affecting her career and personal life. Equal opportunities and rights are also provided in all spheres (social, political, economic, etc.), as well as in all academic, athletic, and extracurricular activities. One of the main strategies for empowering women is thought to be the enforcement of the Uniform Civil Code, which would give women equal rights and equitable treatment while ending long-standing customs that are no longer relevant in today's society. In order to promote gender equality, the Universal Civil Code should be implemented.

***Keywords:** Personal laws, uniform civil code, gender equality, civil rights, women empowerment.*

<sup>1</sup> Advocate, Bar Council of Punjab & Haryana, Enrolment No. PH/4916/2019, Central University of Haryana, Mahendragarh. Mob. No. +917988134642

## I. Introduction

Hindu and Muslim personal laws were written originally during British administration. But, for fear of reprisals from local authorities, the Brits decided against taking further action in this area. Legislation was mostly passed after independence to formalize and modernize personal laws for Buddhists, Hindus, Jains, and Sikhs. Muslims, Christians, and Parsis were exempt on the other side. Religious writings currently govern the personal laws of many societies. Marriage, divorce, legacy, and so on are enclosed beneath personal law. Yet, the women in these places have not profited from these rules. The fact that discrimination against women has occurred as a result of these legislation under the guise of "personal laws" is extremely noteworthy. No matter their class or caste, women in our culture are morally, politically, economically, and socially persecuted. No matter their religious affiliation, all citizens of the nation have access to the same set of laws covering private matters including marriage, divorce, adoption, inheritance, and succession according to the country's universal civil code. State must work to ensure that its citizens have access to Uniform Civil Code throughout entire territory. Traditional and cultural customs are not hampered by adoption of UCC. Discriminatory personal religious laws against one sex would be lessened since it simply administers the personal regulations consistently so that they are same for all sexes of all religions. As a result, it's not eradicating cultural variety but rather bringing about uniformity in personal laws for all citizens.

Personal laws for Hindus and Muslims were initially drafted under British rule. The Brits decided against taking additional action in this area because of concern for local authorities' retaliation. After independence, legislation was mostly passed to formalize and update the personal laws of Buddhists, Hindus, Jains, and Sikhs. On the other side, Muslims, Christians, and Parsis were exempt. Many societies presently base their personal laws on religious literature. Personal law, which is different from public law, deals with marriage, divorce, inheritance, adoption, and maintenance. But none of these rules have benefited the women who live there. It is also remarkable that these rules, which were passed under the pretext of "personal laws," led to discrimination against women. Women in our culture face moral, political, economic, and social persecution regardless of their class or caste. According to the nation's universal civil code, every citizen has access to the same set of laws regulating private concerns such as marriage, divorce, adoption, inheritance, and succession regardless of their religious affiliation. In accordance with Article 44, the state is required to make efforts to guarantee that all of its inhabitants have access to a unified civil code. The adoption of the Uniform Civil Code does not interfere with traditional or cultural practices. Because it administers the personal rules consistently, making them the same for all sexes of all religions, the discriminatory personal religious laws against one sex would be lessened. As a result, it is not eradicating cultural variety but rather bringing about uniformity in personal laws for all citizens.<sup>2</sup>

---

<sup>2</sup> Sanket Prajapati, "A Study on Relevance of Indian Constitution and Uniform Civil Code," 1 *Revista Review Index Journal of Multidisciplinary* 11–5 (2021).

## II. Women Empowerment in India: Historical Perspective

Throughout the Rig Vedic era, both men as well as women were given equal handling in relation to position and prestige. In scriptures, women are portrayed as fierce fighters who maintain an equal place and are more than just their partner. Women were given access to education throughout the early Vedic era. The "Swayamvar" system gave women the option of choose their own spouses. Notwithstanding the patriarchal culture that dominated ancient India, women were treated with respect and love. Yet, over time, women's status and position in society declined. Society started creating gender inequality as a result of women being in such disadvantaged position. Women were given the same respect as the mother goddess (Shakti) throughout the Vedic Era (about 1500–1000 B.C.), demonstrating a great capacity for sacrifice and tolerance. Yet, Manu claimed that they were not independent, and depend upon her sons during old age, her husband during youth and her father during infancy.<sup>3</sup>

India is well known for serving as an example of "harmony in diversity." Every religion in India gives women a special place, which effectively blinds the public to the long-standing practise of countless destructive acts (including those that are physical and mental) against women. In the early Indian civilization, discriminatory practises included sati concept, nagar wadhu system, dowry ritual, killing female during infancy, the pardah system, harassing sexually at place of work, devadashi system, and others. All of these wrongdoings can be attributed to the male superiority complex and the patriarchal structure of society. The male family members severely restricted the socio-political rights of women, including their freedom to take decisions, right to labour, and the right to an education. Several of these terrible practises have been eliminated because to the great and tolerant Indians who speak out against discriminatory behaviour towards women. Raja Ram Mohun Roi made numerous attempts to persuade the British to stop the detrimental practise of Sati concept. Eventually, a number of illustrious Indian social reformers—including Ishvar Chandra Vidyasagar, Aacharya Vinoba Bhawe, Swami Vivekanand, and others—spoke up and made important contributions to the advancement of women in Indian society. The male family members significantly limited women's socio-political rights, such as their ability to make decisions, work, and acquire an education. Due to the tolerance of those in society who speak out against harmful practises towards women, some of these practises have been eliminated. For freedom struggle, women played significant responsibility. Vijaylakshmi Pandit, Rajkumari Amrit Kaur, Aruna Asaf Ali, Sucheta Kriplani, and Kasturba Gandhi, are a few well-known independence fighters. Capt. Laxmi Sahgal made up Rani of Jhansi Regiment of the INA. Sarojini Naidu, poetess and independence fighter, assumed the governor's office for state and as first Native American woman, held office of president of INC.<sup>4</sup>

<sup>3</sup> Alison Habens, "Women, Writing and the (Original) Web," 14 *TEXTILE* 348–59 (2016).

<sup>4</sup> Md. Baharul Islam, "Women Empowerment and Gender Justice," 9 *Research Journal of Humanities and Social Sciences* 683 (2018).



### III. Rights of Women with regard to Personal Laws

Several personal laws control the diverse community in India. These laws are not all the same and vary amongst religions. Women's property and marriage rights aren't given sufficient safety by personal laws which has led to flagrant violations of women's human rights, protected both by Constitution of India and International treaties on human rights. Until the Act of 1955, which prohibited polygamy, polygamy was legal under Hindu law. It was believed that marriage was irrevocable, and women had no freedom to choose or wed more than one husband, although men were free to wed as many wives as they pleased. Only with the Act of 1955 did women have the right to divorce and monogamy was made against the law. Polygamy is still permitted under Muslim personal law, which is a separate issue. Muslim polygamous marriages primarily involve mental abuse of the women. Prior to the Triple Talaq ruling, the practise of a spouse saying the word "talaq" three times was unfair to women. Children of Parsi man, who marries outside community, are recognised "Parsis" according to Parsi law, but this is not the case for a woman. Offspring of a Parsi lady who marries someone from outside her community are not regarded as Parsis. A Parsi woman is also no longer recognised as a Parsi and is not allowed to practise any of the Parsi religious practises if she marries a non-Parsi man. The Act of 1954 was passed into law, allowing any Indian resident to marry under its provisions regardless of his or her practised religion. In the past, a husband would restrict his widow's ability to adopt and would adopt despite her wife's objections. According to the Act of 1956, the husband can no longer adopt without the wife's consent. Adoption is not recognised by Muslim law. In a milestone verdict, Apex Court held, a child may be adopted by anyone under the relevant Act<sup>5</sup>, not considering their religious affiliation and even if their own religious norms forbid it. According to Hindu Law, women were not allowed to marry and did not have any proprietary rights. Only the family's sons were permitted to exercise such a privilege. The Act of 1956 guaranteed women an unalienable right and made it possible for them to inherit their father's property in an equal part. After the Act was amended that year, the daughters could now also become co-parents. Nonetheless, there is still a potential that women will still be denied property rights because society is still largely male-dominated and they ethically view sons or men as the only owners of the land, denying daughters or women their property rights. Act of 1937 governs property rights of Muslim women. Muslim males obtain twice as much property as Muslim women because it is thought that the mehr and support they receive from their husbands after marriage make up for the balance of their share. In terms of property rights, the Act of 1925 applies to Christians, Parsis, and Jews. A specific percentage is due to a Christian woman. The other heirs of the deceased will determine how much of this portion they receive. She receives the full estate if neither children nor other relatives are present. The parents of the deceased receive half of the child's portion, giving a widowed Parsi woman an equal right to her husband's fortune along with her children. The Parsi woman and her children receive an equal share of the inheritance when the parents are not present.

It is clear that lawmakers have made an effort to advance women's interests. Although our laws and courts have made it possible for women to enjoy equal rights regardless of marriage or religion, only knowledge of rights

<sup>5</sup> The Juvenile Justice (Care and Protection of Children) Act 2000, (Act No. 56 of 2000).

and the self-assurance to claim them can help women combat any type of injustice at home, at work, or in society.<sup>6</sup>

#### IV. Issues and challenges involved to empower women in India through Uniform Civil Code

Women have had to fight for a very long time to overcome barriers which existed since very long time and enter space controlled by men. History attests to the fact that women were in a privileged position in ancient India. Women, however, lost their status and were further pushed to the periphery with the advent of new religious traditions in their personal laws. Their standing in society was diminished by gender-based inequality in personal legislation. British introduced several measures to strengthen their power, such as legislation to forbid sati and restrict child marriage. During the deliberations, Constituent Assembly's members also talked about need for nation to adopt a single civil code to eliminate discrimination of gender and religion. Yet, it got included in Part IV of Constitution of India in hopes that future favorable circumstances might allow for its enforcement. Their liberation still faces challenges, nevertheless. They must struggle to overcome restrictions that have stood in the way of entering a space that is dominated by men for millennia. Women's troubles are primarily caused by crimes against them that haven't been resolved, among other reasons. Women still lack the power to make decisions, the freedom to move around, access to education, employment prospects, and media exposure. The complexity of the women's rights concerns in India is a result of a number of reasons. The settlement of these problems will instantly contribute to women's empowerment in India.

- The harsh treatment on women as a result of personal law inequality, particularly with regard to marriage and property rights, is evidence of the stigmatization of women's status.
- Women are prohibited from working in traditional and modern industries, agriculture, and business due to illiteracy. Women's educational advancement is extremely sluggish in rural areas. Furthermore, not everybody has fair access to education.
- Generally speaking, women are not aware of the laws and rules relevant to raising their social position. They are aware of specific provisions pertaining to their rights to succession, marriage, and family, but they opt not to use them. The amount to which women can exercise their legal rights is frequently constrained by the customary dominance of male parents, husbands, and other family elders. The way these issues present themselves is heavily influenced by societal shifts in mentality.
- India is significantly behind other countries due to the problem of gender inequality, and serious efforts are required from all religions to make improvement. Not all women receive the same treatment. Women's equality is still a personal rather than a societal accomplishment in the areas of power, work, and education. The majority of our women still happily accept their position of inferiority. While women and men technically have the same rights, there are limited employment opportunities for them and inadequate safeguards against exploitation exist for working women. In India, gender inequality is the main issue. There are several ways that

<sup>6</sup> Arundhati Roy Choudhury, *Uniform Civil Code: Social Change and Gender Justice* (Indian Social Institute, New Delhi, 1998).

gender inequity expresses itself. Social stereotypes, domestic violence, and societal violence are further factors. Little girls, adolescent girls, and women are still subjected to discrimination in some parts of the nation.

- The length of legal processes and the presence of numerous operational issues are further difficulties with the justice system.
- Although though child marriage is prohibited in India, many women nevertheless get married before the age of consent, which is 18 years old, despite the fact that there are numerous secular laws in place to protect women from infringement of their fundamental rights. There is still a large disparity between those who are protected and those who are not, despite numerous efforts by governmental and non-governmental organizations. Women are still seen as second-class citizens in some sections of the community. It is difficult to shift such a patriarchal worldview because they have long adhered to outdated, male-biased traditions. Women cannot use the secular laws to seek justice because of the influence of their family. They are strictly bound to their rites and customs and are prevented from approaching the courts.

Even though the current state of society urgently calls for it, the ambition of enforcing a common civil code has not been realized 73 years after the Indian Constitution was enacted. Furthermore, the directive principles are not court-enforceable because it is classified under Part IV. They are crucial to the nation's governance, nevertheless. Women need to be empowered and emancipated to contribute to society's wellbeing and progression, and there is growing awareness of this in society today. We must elevate and empower women in society in order to build a sustainable planet.

## V. Constitutional basis for empowerment of women in India

The emancipation of women is one of the biggest issues of the twenty-first century because of how the country is currently run. The Indian Constitution's Preamble, Basic Rights and Responsibilities, and Directive Principles all recognize gender equality as being of utmost importance. According to the Indian Constitution, the State is permitted to establish policies that are biased in women's favor to combat social, educational, and political disadvantages that they experience. To ensure general growth of society, including women, Constitution of India has provisions under Part IV A that deal with respect and maintenance of rich history of complex ethnicity and reject practices that demeans women's dignity. Equal job opportunity for all citizens is part of protection of fundamental rights, as it prohibits distinction with regard to race, gender, caste, or birth-place.<sup>7</sup>

Personal laws that place women in a lesser position are opposed to equality. The root of personal laws is not the Constitution but rather holy scriptures. These personal laws must adhere to the fundamental values of the Indian Constitution; otherwise, if they violate fundamental rights, they are void and unenforceable. In a ruling, Judge Chagla noted that the Constituent Assembly meant for them to be judged in light of Part-III of Constitution because it used phrase "Custom and usages" to define "law" in Article 13. Yet, the definition of Article 13 was purposefully written to exclude "Personal Laws" in order to give these Personal Laws immunity from

<sup>7</sup> The Constitution of India, arts. 14, 15, 15(3), 16, 39(a) 39(b), 39(c).

constitutional objections. Later, it was determined that this decision was arbitrary and it was contested. The personal laws were determined to be "laws in effect" under Constitution of India.<sup>8</sup>

Rule of Law, as mentioned in Part-III of Constitution of India disallows any form of distinction among citizens which ensures that everyone is treated fairly and equitably and lessens the arbitrary nature of government decisions.<sup>9</sup> It also allows classification on reasonable grounds as women are given special consideration, for their upliftment in society. For instance, a rule requiring female quotas in Parliament is meant to assist women in overcoming long-standing barriers to their full involvement in politics and the public realm. Women have equal opportunities to work in the public sector without encountering discrimination if there is equality of opportunity in areas of public employment.

According to the state's Directive Principles, it is responsible for developing policies to improve the status of women. The government must also make an effort to guarantee that everyone, especially women, has enough means of support, including equal pay for equivalent work. This is crucial since historically, men have paid women less because they believe they are not as active as men. This moral ideal is codified in Part IV of the Indian Constitution, which the government now openly addresses. Equitable resource sharing between men and women is the next stage. Also, the state guarantees all workers fair and respectable working conditions. Maternity accommodations and nursing rooms are available to protect women's health at work.

The 73rd Constitutional Amendment Act of 1993 was created to standardize the Panchayati Raj system which significantly plays a part in empowering women. The new Panchayati Raj was put into place with the goal of localizing female empowerment.

Constitution of India cannot be replaced by any law that goes against its tenets. Individuals have the fundamental right to profess, practice, and spread any religion of their choosing, but they are not allowed to go beyond what is allowed by the constitution. In order to give women in society an equal footing with males, the Indian Constitution adheres to the concept of positive discrimination. The universal civil code, one of state policy's guiding principles, is significant aspect that would aid in achieving gender parity by elevating women who have over time lost their standing and dignity. The country urgently need the implementation of a common civil code to uniformly handle civil concerns including marriage, adoption, property, maintenance, and so forth without making distinctions based on gender or religion.

## VI. Women Empowerment in India: Legal Structure

To narrow the gender gap, the legislature has passed a number of Acts that empower women on a secular basis. These laws apply to all citizens of the nation without distinction based on gender or religion. Below is a quick summary of a few of these secular Acts:

- The 1961 Dowry Prohibition Act: Every party to a marriage is forbidden from accepting or giving a dowry from anyone connected to the union, including the couple's parents. It is appropriate to Indians with a variety of

<sup>8</sup> The Constitution of India, art. 13.

<sup>9</sup> The Constitution of India, art. 14.



religious backgrounds. The Indian Criminal Code of 1860 outlines punishments for violence against women committed by husbands or other family members as well as penalties for dowry-related cruelty, dowry-related death, and supporting homicide.

- The 1991–2000 National Plan of Action for Girls By reducing infanticide and female foeticide, ending gender discrimination, providing clean water and food close to homes, rehabilitating and safeguarding girls from exploitation, abuse, and assault, it was passed in order to protect and progress females.
- National Commission on the Status of Women (1992): The Commission was established to evaluate constitutional and legal protections afforded to women, suggesting corrective legislative actions, facilitating dispute resolution, and making recommendations on policy matters affecting women. Also, it addressed child marriage and funded campaigns to raise legal awareness.
- The Protection of Women from Domestic Violence Act (Protection of Women from Domestic Violence Act), passed in 2005, was put into place to outlaw dowries and domestic abuse. In the Act, the phrase "domestic violence" is defined legally. It focuses on the assistance provided to affected women, such as compensation, protections, and the right to live with a shared family.
- Private Sector Maternity Benefit Amendment Act, 2017: This law gave adoptive moms particular benefits and increased the maternity leave duration from 12 to 26 weeks with pay. After the 26-week leave period, it established a provision allowing women to work from home." A creche must be offered by any business with 50 or more employees. By law, employers are obligated to provide potential hires with information on the maternity benefits that are available to them.
- The Special Marriage Act of 1954 allows for civil union of citizens as well as nationals of Indian origin who are having no regard to either party's religion or creed.
- Juvenile Justice (Care and Protection of Children) Act, 2015 allows anyone to adopt a kid, regardless of their religion or whether their personal religious norms forbid it.
- The NPEW, or National Policy for the Empowerment of Women mandates elimination of physical or psychological violence against women, including those that result from accepted conventions, traditions, or practises, whether they take place within the home or throughout society as a whole. It aimed to create and improve institutions, techniques, and initiatives for assistance and the prevention of such violence, which includes dowries and sexual abuse on the work, as well as for victims' rehabilitation of aggression and effective punishment of violent offenders.
- Prohibition of Child Marriage Act, 2006 contains provisions which prohibits and punishes child weddings between males and females under the ages of 21 and 18, respectively, even if religious conventions permit it.



## VII. Uniform Civil Code and Women Empowerment: Role of Judiciary

Indian courts have a critical role to play in empowering women by advocating for the need to enforce the uniform civil code in a nation where gender inequity is embedded in practically every facet of life. On addressing the problem of maintenance, Chief Justice YV Chandrachud remarked in his ruling that, as a single civil code is a device that fosters both national tranquility and parity before law, the Parliament should explain its general principles. In a different decision, the Apex Court stressed need for a unified civil code in situations involving rights of succession and urged government to ratify one to protect oppressed and foster national cohesion. In a case, the Court ruled that workers shouldn't be subjected to discrimination based on their gender and that they should receive adequate compensation for the work they do.

- The Apex Court ruled that golden triangle of Articles 14, 19, and 21 in Constitution of India promotes gender equality. A flagrant breach of these rights and the idea of gender parity is sexual harassment in the workplace. In the absence of domestic legislation addressing sexual abuse, international treaties and regulations can help.
- The inconvenience brought about by lack of unified civil code was noted in a ruling. The second marriage was deemed to be bigamous in nature and to infringe fundamental rights.
- According to a court ruling, the crime of rape violates a woman's right to life, liberty, and treatment as an equal and with respect. The respect and dignity of women cannot be compromised. Also, everyone has the right to live in peace. Victims of rape are entitled to financial restitution from courts.
- In a different decision, the Supreme Court declared that regardless of whether the child's father is alive or not, a woman can serve as the child's legal guardian. This decision invalidated laws and practices that were discriminatory against women.

The judiciary is in charge of interpreting and enforcing the provisions specified in the Indian Constitution. Giving individuals who have been harmed justice is the law's main goal. The implementation of UCC has become judiciary's top priority in recent years due to the rise of cases involving issues with unfair and prejudiced personal laws. The establishment of a standard civil code is expected to ease the burden of lawsuits involving the denial of civil rights to people in accordance with their gender and to advance women's empowerment across the country.

## VIII. Women Empowerment in India: Conclusion and Suggestions

### Conclusion

India's diverse civilization has been governed by personal laws from antiquity, which covered concerns relating to civil rights like marriage, propriety, maintenance processes, adoption, and more. But because the patriarchal attitude has mostly ruled society, so too have conventions and traditions been shaped in that way. As a result, not everyone is entitled to the same civil rights. For a very long time, women have been denied their civil rights. The country's Constitution's authors made attempts to create uniformity in civil matters so that women's status could be improved and gender-based disparities could be eliminated, but these efforts to enforce a standard civil code failed. The Indian Constitution favours the use of positive discrimination to help the underprivileged

sections of society, and the judiciary has been actively pressing the Parliament to change and remove laws that are discriminatory against women. Moreover, pressure is applied to push for the adoption of a standard civil code across the board. So, the UCC will act as a hub to encourage the adoption of strong legislation that will be based on a shared set of laws and advance gender equality. It is crucial to keep in mind that even when women's religious communities close the door, the legal system should always be open to small improvements in women's status.

### **Suggestions**

Women won't be able to fully exercise their human rights until personal laws are merged into a universal civil code with fair, rational, and nondiscriminatory provisions, only then women's status in India would significantly improve. Civil laws should be uniform, just like the criminal laws already are. The cause of inclusive participation is advanced through the empowerment of women, and this benefits both society and the environment. It alludes to raising happiness at home and in workplaces where women have an impact. Governmental actions by themselves are not sufficient to gain the object. Society must take initiative to remove gender distinction and give women complete control over their lives as well as an equal chance to partake in various societal affairs. To raise awareness and teach the youth about the value of consistent laws for the nation, legal aid programs and workshops (both offline and online) should be held. The Legislature should pass more secular legislation that protects people's civil rights without regard to their gender or religion, similar to the Special Marriage Act, Juvenile Justice Act, and other such laws. Even if it takes time, the process is not insurmountable. Before women have access to property and money, enabling them to stand on their own two feet and determine their identities in society, true and lasting female empowerment cannot take place. Let's swear to defend an egalitarian society where men and women have the same freedom to express themselves and advance both their own personal interests and the general good of the community. The government should get moving on realizing the dream of the nation's Constitutional founders, who originally envisioned enacting the Uniform Civil Code for India. The time is now favorable to establish consistent laws as women's empowerment is in great demand. Through the uniformity of rules for everyone, the Uniform Civil Code would secure gender equality and be advantageous for Indian women.

